



South Dakota Legislative Research Council

Issue Memorandum 95-08

THE LICENSURE OF PRIVATE INVESTIGATORS

During the 1995 Legislative Session, the licensure of private investigators was discussed in response to the introduction of House Bill 1301, a bill to provide for the licensure and regulation of private detectives. The bill was unsuccessful, but interest in the concept of licensure has continued. What follows is a discussion of what other states are doing with regard to the regulation of private investigators. For the purposes of this memorandum, the terms investigator and detective are synonymous unless otherwise noted.

LICENSURE IN GENERAL

Before exploring the licensure of private investigators, it is useful to remember when licensure is generally considered to be appropriate. The commonly accepted criteria used to determine when regulation should be imposed is as follows:

- (1) The unregulated practice can harm or endanger the health, safety, and welfare of the public and this harm is recognizable and likely to occur;
- (2) The practice has inherent in it qualities that distinguish it from ordinary work and labor;
- (3) The practice requires specialized skill or training, and the public needs, and will benefit by, assurances of professional ability; and
- (4) The public is not effectively protected by any other means, and the economic impact on the public of regulating the practice is justified.

Generally, if an occupation or profession fails to meet these criteria, licensure is not justified, although some less restrictive form of regulation may be appropriate.

REQUIREMENTS FOR LICENSURE

While thirty-seven states license private investigators in some form, thirteen states currently do not. The states which do not have a statewide licensure law are: Alabama, Alaska, Colorado, Idaho, Kentucky, Mississippi, Missouri, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, and Wyoming. Sometimes cities and counties in these states have their own requirements for private investigators. For example, while the state of Rhode Island does not issue licenses to private investigators, the city of Providence does. To receive a private investigator's license, an investigator must have an office in the city and provide two references, two photographs, and a letter from the investigator's local chief of police if the investigator is not a resident of Rhode Island. The investigator must also provide a three thousand dollar surety bond and pay a one hundred dollar license fee each year. Other restrictions may apply in these states that do not have statewide licensure of private investigators; in some of these states an investigator is required to obtain a business license.

Of the states that license private investigators, there are many approaches to

licensure. Some requirements are very flexible as in Louisiana, Nebraska, and Oklahoma. For example, in Nebraska a private investigator must be twenty-one, be a United States citizen, be of good moral character, and meet a flexible, minimum experience requirement. Some states have an examination requirement and no experience requirement. Iowa, Kansas, and North Dakota each license private investigators in this manner. Other states require experience and an examination. These states are Arkansas, Hawaii, Illinois, Nevada, New Mexico, North Carolina, Vermont, Virginia, Washington, and Wisconsin. The following states require experience but no examination for licensure: Arizona, California, Connecticut, Delaware, Florida, Georgia, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, Ohio, South Carolina, Tennessee, Texas, and West Virginia.

In addition to examination and experience requirements, a variety of other requirements are associated with licensure. What follows is not an exhaustive list of requirements but provides an overview of the most prevalent requirements imposed by states: bonding and insurance, license fees, residency, training, photographs and fingerprints, and minimum age.

Bonding requirements are not found in every state that licenses private investigators, but in those states that do require bonding, the amount is generally around five thousand dollars, but may be as high as twenty-five thousand dollars or more. In addition to, or sometimes in lieu of bonding, some states require liability **insurance**. The amounts vary, but there is usually a requirement for bodily or personal injury and a separate requirement for property damage. Another approach taken by some states to provide

protection from wrongful licensees has been the establishment of a recovery fund. Licensees are required to pay a certain amount into the fund, and the money is used to pay a victim of a licensee's wrongdoing. For more specific details on insurance and bonding, see the table at the end of this memorandum.

License **fees** vary greatly among the states. Some are quite modest while others range into several hundreds of dollars. Some states have corporate licenses in addition to private investigator license fees. More specificity is provided in the table at the end of this memorandum.

Residency requirements also vary greatly. Some states require that a licensee be a resident of the United States. Other states require that a licensee be a resident of the state in which the person seeks licensure. Still others are silent on this matter.

A certain number of **training** hours are sometimes required for licensure. Others states deal with this by requiring a certain amount of experience. There are states that require neither. Some states, such as Maryland, require as much as five years of experience as an investigator with a local, state, or federal law enforcement agency.

Photographs and fingerprints may be required of licensees. In some states this is part of a background check. To help ensure that a license is not issued to an unscrupulous person, some jurisdictions conduct background checks on all applicants for licensure. A background check often includes a search of any convictions the applicant may have; the severity of a conviction that would disqualify a applicant varies. In Iowa, for example, a private investigator may not have a conviction for a

felony.

Many states require that a licensee be a certain *minimum age*, which varies from eighteen to twenty-five years of age. Other states use a minimum experience requirement as noted earlier. There are some states where neither a minimum age nor a certain amount of experience is required.

FEATURES OF THE 1995 BILL

The bill that was introduced during the 1995 Legislative Session for the licensure of private detectives, House Bill 1301, which contains many of the provisions of the Washington statute, included the following requirements:

- (1) An examination and three years of experience;
- (2) A surety bond in the amount of fifty thousand dollars or liability coverage of at least one hundred thousand dollars for bodily or personal injury and twenty-five thousand dollars for property damage;
- (3) License fees not to exceed two hundred fifty dollars;
- (4) Citizenship of the United States;
- (5) A set of fingerprints; and
- (6) Minimum age of twenty-one years.

In addition, House Bill 1301 included other licensure requirements. The applicant for licensure could not have been convicted of a crime in any jurisdiction that directly related to the applicant's capacity to perform the duties of a private detective. The applicant would have been required to be employed by or have an employment offer from a private detective agency or be licensed as a private detective agency.

REGULATING ENTITY

In those states that require licensure of private investigators, various entities are

involved in the regulation. In some states the regulation is accomplished through an agency of state government such as a department of professional regulation. This method was proposed by House Bill 1301 which would have placed the responsibility for licensure with the Department of Commerce and Regulation. In other states the state police, the attorney general's office, or the secretary of state's office is responsible for licensing private investigators. Although it is the least common method for licensing private investigators, some states license through a board at least partly composed of private investigators. To see what entity is charged with regulating the licensure of private investigators in each state that licenses them, refer to the table at the end of this memorandum.

PROS AND CONS OF LICENSURE

Arguments in favor of licensure include protection of the public from unscrupulous investigators and their unethical behavior. Those favoring licensure believe that the threat of revocation of a license for wrongdoing will deter wrongful behavior. They also argue it will ensure a minimum level of competence to perform the job. Perhaps their strongest argument is the nature of the occupation itself. After all, licensure is protecting the public from persons who delve into the lives of others, perhaps while carrying weapons.

Those arguing against licensure believe that licensure does not ensure ethical behavior or competence, but instead makes the service more costly and reduces competition. They believe that the requirements do not test an individual's competence. Instead, they believe that licensure results in higher costs for the consumer due to passing on license fee costs and less competition due to

restrictive licensure requirements.

CONCLUSION

While nearly three-fourths of the states regulate private investigators in some way, the requirements vary greatly from very minimal to very stringent. House Bill 1301 brought the debate to South Dakota. The first question to be decided is whether to

regulate private investigators, and if there is an affirmative response to this question, two more questions follow: (1) what requirements should be in place? and (2) who should be responsible for the regulation? This paper does not attempt to answer these legislative questions but is intended to provide some information for the discussion.

STATES THAT LICENSE PRIVATE INVESTIGATORS			
STATE	LICENSING ENTITY	FEES	SURETY BOND
Arizona	Department of Public Safety	\$150 application plus fingerprint; \$300 license; \$150 renewal	\$2,500
Arkansas	Arkansas State Police	\$150 license; \$50 renewal	
California	Bureau of Collection & Investigative Services	\$25 application; \$100 license; \$27 fingerprint processing	None, but bodyguards must have liability insurance
Connecticut	Division of State Police	May be required	
Delaware	State Police	May be required	\$5,000 indiv; \$10,000 if employer; \$1 M liability insurance
Florida	Florida Law Enforcement Department	May be required	
Georgia	Board of Private Detective & Security Agencies	\$75 exam; \$320 private detective company; \$45 emp'ee registration; \$23 fingerprint processing	

Hawaii	Hawaii Board of Private Detectives & Guards	\$50 application; \$50 exam; \$25 license; \$75 renewal	\$5,000
Illinois	IL Dept. of Professional Regulation	\$217 exam; \$500 license; \$450 renewal	
Indiana	IN Professional Licensing Agency	May be required	
Iowa	Department of Public Safety	\$100 license; \$100 renewal	\$5,000
Kansas	Attorney General's Office	May be required	Insurance and bond required
Louisiana	Board of Private Investigator Examiners	May be required	
Maine	Public Safety Department	May be required	
Maryland	Maryland State Police	\$400 application; \$200 renewal	\$3,000
Massachusetts *	Department of State Police	\$1,100 license; \$600 renewal	\$5,000
	Department of Public Safety	May be required	\$5,000
Michigan	Department of State Police	\$100 indiv license; \$50 renewal; \$200 firm license, \$200 renewal; \$25 each branch	\$5,000 for an individual; \$10,000 for a firm
Minnesota	MN Private Detective & Protective Agent Services Board	\$500 license; \$400 renewal	\$10,000 and proof of financial responsibility
Montana	MT Board of Private Security Patrolmen & Investigators	\$25 unarmed or \$75 armed applcn; \$25 exam; \$20 unarmed or \$50 armed renewal	

Nebraska	Secretary of State	\$100 agency; \$50 private investigator; \$25 plain clothes; \$50 renewal	
Nevada	Attorney General's Office	May be required	
New Hampshire	Department of Safety	May be required	
New Jersey	Division of State Police	\$250 license	\$3,000
New Mexico	Department of Reg. & Licensing	\$200 license	
New York	NY State Department of State	\$15 exam; \$400-500 application; \$400-500 renewal	\$10,000
North Carolina	Private Protective Services Board	\$150 application; \$150 license; \$50 recovery fund; \$150 renewal	
North Dakota	Attorney General's Office	\$20 exam; \$50 license; \$25 renewal	\$5,000
Ohio	Commerce Department	\$25 application & exam; \$250 license	Proof of insurability
Oklahoma	Council on Law Enforcement Educ & Training	\$60-110 license; \$25-75 renewal	
South Carolina	State Law Enforcement Division	\$200 license	\$10,000
Tennessee	Private Investigator Commission	May be required	
Texas	TX Bd of Private Investigators & Private Security Agencies	\$225-340 license and renewal	
Vermont	Bd of Private Investigative & Security License Services	\$6 application; \$100 renewal; \$25 late renewal	\$25,000

Virginia	Department of Commerce	May be required	\$25,000 or min. liability ins. of \$100,000/300,000
Washington	Department of Licensing	May be required	\$10,000 or min. liability ins. of \$25,000/25,000
West Virginia	Secretary of State	\$500 nonresident corp or indiv; \$50 resident indiv; \$100 resident corp	
Wisconsin	Regulations & Licensing Dept.	May be required	Approved bond or liability ins. policy

* In Massachusetts, the State Police issue private detective licenses and the Department of Public Safety issues private investigator licenses.

Note: For some states the specific amounts for fees were not available, but fees are required in most of those jurisdictions.

This issue memorandum was written by Jacque Storm, Senior Legislative Attorney for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
